

GAHC010142772021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4979/2021

PRAKRITISH PAUL
S/O LATE PRAFULLA KUMAR PAUL, R/O VILL. ARAIANI PART-II, P.O. AND
P.S. BOGRIBARI, DIST. KOKRAJHAR (BTAD), ASSAM, PIN 783349

VERSUS

THE BODOLAND TERRITORIAL COUNCIL AND 3 ORS.
REPRESENTED BY THE SECY., MARKET AND FAIRS DEPTT. KOKRAJHAR
(BTAD), ASSAM, PIN 7783370

2:THE PROJECT DIRECTOR
DRDA
KOKRAJHAR
(BTAD)
ASSAM
PIN 783370

3:THE BDO

MAHAMARA DEV. BLOCK
DIST. KOKRAJHAR (BTAD)
ASSAM
PIN 783349

4:THE JUNIOR ENGINEER

MAHAMARA DEV. BLOCK
DIST. KOKRAJHAR (BTAD)
ASSAM
PIN 78334

Advocate for the Petitioner : MR. M A ISLAM

Advocate for the Respondent : R.MUSHAHARY (SC, BTC)

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 29-05-2023

Heard Mr. M.A. Islam, learned counsel for the petitioner and Mr. S. Bora, learned Standing Counsel, BTC for all the respondents.

2. The subject-matter in this writ petition is execution of a contract work viz. 'Construction of Earth Filling and Sand Gravelling at Bagribari Araiani Daily Bazar under Mahamaya Development Block for the year 2015-2016' ['the Contract-Work', for short] and non-disbursal of an amount of Rs. 6,00,000/- in favour of the petitioner which amount the petitioner has claimed to be due from the authorities in the BTC.

3. The case projected by the petitioner in this writ petition, in brief, is that Administrative Approval for the Contract-Work was accorded on 30.11.2015 [Annexure-1 to the writ petition]. Pursuant to a Tender Notice, the Secretary, BTC accepted the lowest rate of tender as per plan and estimate offered by the petitioner for the Contract-Work as per approved plan and estimate and issued an Order of Approval of Tender on 29.06.2016 [Annexure-2 to the writ petition]. Accordingly, the petitioner was issued a Work Order dated 11.07.2016 [Annexure-3 to the writ petition] whereby the Contract-Work was awarded in his favour. The petitioner has asserted that after compliance of the requisite formalities, he proceeded to execute the Contract-Work as per the specifications, drawings and agreement and completed the same. The

authorities in the respondent BTC physically verified the Contract-Work and found that the Contract-Work had been completed as per the specifications, drawings, and agreement. In that connection, the respondent BTC authorities had issued a Progress Report dated 12.08.2016 [Annexure-4 to the writ petition] and a Utilization Certificate [Annexure-5 to the writ petition] certifying that the Contract-Work has been completed to the extent of 100%. By an Order dated 22.09.2017 [Annexure-6 to the writ petition], the Secretary, BTC accorded sanction for release of an amount not exceeding to Rs. 10,00,000/- to the respondent no. 3 in respect of the Contract-Work with the observation that the expenditure would be made from the Council fund under the Head of Account "8443-Civil Deposit-Personal Deposit [BTC]". By an Order dated 01.08.2018, the Secretary, BTC accorded sanction for release of an amount of Rs. 4,00,000/- to the respondent no. 3 in respect of the Contract Work [Annexure-7 to the writ petition]. Projecting that the petitioner had received only an amount of Rs. 4,00,000/- out of the final bill amount of Rs. 10,00,000/- against the Contract-Work, this writ petition is preferred seeking a direction to the respondent BTC authorities to release the remaining amount of Rs. 6,00,000/-.

4. Mr. Bora, learned Standing Counsel, BTC has submitted that though from the documents annexed to this writ petition, it is prima facie reflected that the petitioner had completed the Contract-Work but still there is requirement for verification of the matter. It is submitted that a decision was taken by the respondent BTC authorities to examine all the pending claims relating to contract works and to that effect the respondent no. 1 had passed an order on 15.11.2021. As per the said Order, the respondent BTC authorities had undertaken to examine all the cases relating to outstanding liabilities within a period of 6 [six] months from the date of issuance of the said order. Mr. Bora

has produced copy of the said order before this Court. Mr. Bora has submitted that the case of the petitioner can be considered by undertaking an exercise in similar line like the one indicated in the Order dated 15.11.2021.

5. The order bearing No. BTC/F(Audit)/49/2021/Pt-I/1] dated Kokrajhar, the 15th November, 2021 reads as under :-

“ BODOLAND TERRITORIAL COUNCIL SECRETARIAT
BODOFA NWGWR::KOKRAJHAR

No. BTC/F(Audit)49/2021/Pt-I/1

Dated- Kokrajhar, the 15th November, 2021

ORDER

WHEREAS it has been noticed that huge number of outstanding liabilities have been created by the erstwhile BTAD authority since 2011 to February, 2020 through contractual work orders to the Contractors/Suppliers, etc. under various entrusted departments of BTC without corresponding budget provisions

WHEREAS the outstanding liabilities created by the erstwhile BTAD authority are required to undergo detail examination and verification in the context of proposals of such works made, NIT, selection of successful bidders, quality of works, completion of works, fund position, part payment, etc.

WHEREAS it is further noticed that a good number of court cases have been filed before the Hon'ble Gauhati High Court as well as in the District Courts of respective District Jurisdictions under BTAD by the Contractors/Suppliers, etc. praying for release of payments to the Contractors/Suppliers, etc. against their respective work orders

WHEREAS, reportedly, out of the aforesaid contractual works, some part payments also made against portion of works completed by the Contractors/Suppliers, etc. by the erstwhile BTAD authority in certain cases. However, such fund flow does not follow any rationale and is found to be arbitrant

AND THEREFORE, in view of the above facts and circumstances, the BTC has decided to verify all such works by conducting comprehensive audit, financial verification and

physical verification wherever applicable, against all such contractual works in the Govt. level and further to complete the whole exercise in this regard within 6 (six) months from the date of issue of this order. After verifying the same, if it is found that the claims are admissible after following all established financial norms, the same shall be processed in accordance with law and as per decision contained in *Tamsher Ali and others vs. State of Assam and others* reported in 2008 (4) GLT 1 accordingly. Furthermore, if instances of wrongdoing or misappropriation are found during such comprehensive audit, financial verification and physical verification wherever applicable, appropriate legal action would be taken against the persons/agencies/firms concerned in accordance with the applicable laws.

This order shall come into force with immediate effect.”

6. Mr. Bora, learned Standing Counsel, BTC has placed on record a copy of another Order bearing no. BTC/T&D-185/2021/109 dated 16.07.2022 which goes to show that the Executive Council of the BTC decided to re-allocate/re-appropriate a sum of Rs. 8600.62 Lakhs to the concerned departments for payment of previous liabilities of construction works as cleared by the consulting agency, M/s NITCON Limited and in the line of *Tamsher Ali and Ors. vs. State of Assam and Ors.* reported in 2008 [4] GLT 1 [FB].

7. Having considered the contents of the Order dated 15.11.2021 and the order dated 16.07.2022 and the decision of the Full Bench judgment of this Court, rendered on 29.09.2008, in Writ Appeal No. 484/2005 [*Tamsher Ali and Ors. vs. State of Assam and Ors.*], and similar other 194 writ petitions reported in 2008 [4] GLT 1 [FB], it is considered appropriate that the respondent authorities in the respondent BTC shall undertake and complete similar kind of exercise, like the one mentioned in the Order dated 15.11.2021 and the Order dated 16.07.2022, in respect of the claim of the petitioner also within a period of 3 [three] months. If after such exercise, the petitioner is found entitled to the

amount of Rs. 6,00,000/- or any other amount, the same shall be released in favour of the petitioner in terms of the decision in Tamsher Ali [supra]. The petitioner shall submit a certified copy of this order to the respondent no. 1 i.e. the Principal Secretary, Bodoland Territorial Council [BTC], Kokrajhar within 7 [seven] days from today for his doing the needful.

8. The writ petition stands disposed of in terms of the above observation and direction.

JUDGE

Comparing Assistant